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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

SLADE LOHMAN,

Plaintiff and Respondent,

v.

JC EPHRAIM,

Defendant and Appellant.

B207755

(Los Angeles County
Super. Ct. No. BC343601)

ORDER MODIFYING OPINION
[no change in the judgment]

THE COURT:

It is ordered that the opinion filed herein on December 30, 2009, be modified as follows:

1. On page 4, second sentence of the second paragraph, the amount “\$20,000” is changed to “\$10,000” so the sentence reads:

Lohman returned \$10,000 of the repayment to escrow, where it remained as of the day of trial in February 2008.

2. On page 11, the first paragraph, beginning “Ephraim argues” is deleted and the following paragraph is inserted in its place:

Ephraim argues Lohman repudiated the purchase agreement “by foreclosing on the loans” and demanding repayment with interest, in May and June 2005. Ephraim misapprehends the nature of the \$20,000 in advances and the effect of Lohman’s demand

for repayment. The purchase agreement and amendment described the two \$10,000 payments as deposits made into escrow by Lohman that were to be released to McCrary temporarily. McCrary agreed to repay the \$20,000 at the end of one year. She agreed to pay interest on the \$20,000 if escrow did not close as planned. Lohman's demand for repayment with interest one year after the payments were made was no more than a demand that McCrary fulfill her obligations under the agreement. The trial court thus had substantial evidence from which to conclude that Lohman's taking interest upon temporarily released deposits did not constitute a repudiation of the purchase agreement.

3. On page 12, fourth sentence of the second paragraph, the amount "\$20,000" is changed to "\$10,000" so the sentence reads:

And Lohman at all times acted as if escrow was ongoing, re-depositing \$10,000 in June 2005 and leaving it there up to the day of trial in February 2008.

There is no change in the judgment.

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CHANEY, Acting P. J.

JOHNSON, J.